

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

DAVID DELL'AQUILLA,
Plaintiff,

vs.

WAYNE LAPIERRE, et al.
Defendants.

)
)
)
)
)
)
)

Case No.: 3:19-cv-00679
Judge Campbell/Frensley

ORDER

Pending before the Court is the Plaintiff's Motion for Leave to Amend His Complaint. Docket No. 37. He has filed a proposed Amended Complaint with the Motion (Docket No. 37-1) and supporting Memorandum of Law (Docket No. 38). The Defendants have filed responses indicating they take no position on the Plaintiff's Motion to Amend. Docket Nos. 39 and 40. For the reasons stated herein, Plaintiff's Motion is GRANTED.

Motions to Amend are governed by Fed. R. Civ. P. 15, which provides in relevant part:

(a) Amendments Before Trial.

(1) *Amending as a matter of course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading

(2) *Other amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

While leave to amend should be "freely given when justice so requires," leave to amend should be denied when "it would result in undue delay or prejudice to the opposing party ... or

where the amendment is futile." *See Forman*, 371 U.S. 178; *Duchon v. Cajon Co.*, 791 F.2d 43 (6th Cir. 1986).

Plaintiff initially filed this action pro se. Docket No. 1. On December 19, 2019 counsel entered a Notice of Appearance on behalf of the Plaintiff. Docket No. 24. Shortly thereafter, Plaintiff filed the instant Motion to Amend his Complaint. Docket No. 37. In response to the original Complaint each of the Defendants have filed Motions to Dismiss for failure to state a claim. Docket Nos. 20, 32 and 35. Plaintiff seeks leave to amend his Complaint in part to respond to issues raised in the various Motions to Dismiss. Docket No. 37.

Given that the case in its early stages, counsel has only recently entered his appearance, and lack of opposition by any of the Defendants, the Plaintiff's Motion will be GRANTED.

For the reasons set forth herein, the Plaintiff's Motion to Amend (Docket No. 37) is GRANTED. The Clerk is directed to file the Amended Complaint (Docket No. 37-1). In light of the Amended Complaint, the Defendants' Motions to Dismiss (Docket Nos. 20, 32 and 35) are Denied without prejudice as moot.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Jeffery S. Frensley", is written over a horizontal line.

JEFFERY S. FRENSLEY
United States Magistrate Judge